



GAU 2761
PATENT
Attorney Docket No. 106.48
#7
V.21
3/17/00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)

Joshua D. Kaplan)

Serial No.: 09/412,404)

Filed: October 5, 1999)

For: **NETWORK APPARATUS AND
METHOD FOR PREVIEW OF
MUSIC PRODUCTS AND
COMPILATION OF MARKET
DATA**)

Examiner: Not Yet Assigned

Art Unit: 2761

**PETITION PURSUANT TO
37 C.F.R. § 1.102 TO MAKE THE SUBJECT
APPLICATION SPECIAL**

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Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

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I hereby certify that the correspondence enclosed herein is being deposited as first class mail with the United States Postal Service on this date January 28, 2000, in an envelope addressed to: Asst. Commissioner for Patents, Washington, D.C. 20231.

By: 

C. Wilson

Applicant respectfully petitions to have the above captioned application considered special, pursuant to 37 C.F.R. § 1.102 and MPEP § 708.02 II. Applicant encloses the petition fee of \$130.00 pursuant to 37 C.F.R. § 1.17(i) and a Declaration by Geoffrey T. Staniford ("Decl. Staniford"), attorney of record in the instant case, pursuant to MPEP § 708.02. In the event that the petition fee is defective or missing, the Commissioner is hereby authorized to charge any fees in connection with this Petition, and to credit any overpayment, to Deposit Account No. 04-0822.

I. Introduction

The present continuation application relates to the implementation of a patented technology on a network web site, and is one of a family of applications that claims priority back to September 13, 1990. Two applications of this family of applications have issued as patents.

There is at least one potential infringer of the present application, and a search of the relevant art does not reveal any references which preclude patentability. This application must therefore be taken up in special order because the present petition meets all of the criteria set forth in MPEP § 708.02 (II).

MPEP § 708.02 (II) requires that the applicant file a petition accompanied by a verified statement by an attorney/agent registered to practice before the PTO alleging that: 1) there is an infringing device or product actually on the market or method in use; 2) a rigid comparison of the alleged infringing device, product, or method with the claims of the application has been made and that in his or her opinion, some of the claims are unquestionably infringed; and 3) he or she has made or caused to be made a careful and thorough search of the prior art or has a good knowledge of the pertinent prior art.

II. There Is An Infringing Product On The Market

Bigstar Entertainment™, Inc. currently maintains a network web site having the internet address "http://www.bigstar.com" ("the Bigstar site"). This web site incorporates features that infringe at least pending Claims 1 and 6 of the present application. *See* Decl. Staniford, pages 2-4, and Exhibits A-H.

III. A Rigid Comparison Has Been Made Between The Bigstar Site And Pending Independent Claims 1 And 6.

Applicant herewith presents two claim charts to compare pending independent Claims 1 and 6 of the present application with the features of the Bigstar site. *See* Decl. Staniford, p. 4, Ex. H. There is a direct one-to-one correlation between each element of pending Claims 1 and 6 and the features of the Bigstar site. Claims 1 and 6 are therefore unquestionably infringed by the Bigstar site.

IV. A Search Has Been Performed Of The Relevant Art.

A careful and thorough search has also been performed under the inventor's and his attorneys' direction. The search, conducted by Stanley D. Schwartz, Esq., was a computerized search of patents classified and cross-referenced in Class 345: subclasses 327 and 328; and in Class 707: subclass 529. The results of the search are provided in the supplemental information disclosure statement enclosed with this petition. None of the prior art references are believed to render the claims of the present application unpatentable.


V. Conclusion

Applicant respectfully requests that this petition to make the above captioned application special be accepted for the reasons set forth fully above. In particular, there is at least one product currently on the market, the Bigstar site, which would unquestionably infringe the pending claims if allowed to issue. Furthermore, based on a search of the prior art, the pending claims are allowable over the cited references.

If the Examiner has any questions, he or she is encouraged to call the undersigned attorney collect at (415)705-6377 so that any outstanding issues may be resolved and this petition accepted and the corresponding application passed to issue.

Respectfully submitted,
DERGOSITS & NOAH LLP

Dated: January 28, 2000

By: 
Geoffrey T. Staniford
Reg. No. 43,151

DERGOSITS & NOAH LLP
Four Embarcadero Center, Suite 1150
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(415)705-6377

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Joshua D. Kaplan

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For: **NETWORK APPARATUS AND
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Art Unit: 2761

**DECLARATION OF GEOFFREY T.
STANIFORD IN SUPPORT OF A
37 C.F.R. § 1.102 TO MAKE SPECIAL**

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

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By: C. Wilson

C. Wilson

I, Geoffrey T. Staniford, hereby declare as follows:

1. I am an attorney of record in the above-captioned U.S. patent application. I was responsible for drafting the claims and filing the above-captioned U.S. patent application. I fully understand its content and scope. I submit this declaration in support of applicant's petition to make special pursuant to 37 C.F.R. § 1.102.
2. It is my belief that the Bigstar Entertainment™, Inc. web site ("the Bigstar site") located at <http://www.bigstar.com> unquestionably infringes at least Claims 1 and 6 of the present application as amended by the Preliminary Amendment filed on October 5, 1999.
3. Claim 1 is directed to a method for enabling a user to preview a portion of a pre-recorded video product from a network web site containing pre-selected portions of different pre-recorded video products, using a computer, a computer display and a telecommunications link between the

user's computer and the network web site. Claim 6 of the present invention is directed to a network web site for allowing a remote user to preview a pre-selected portion of a pre-recorded video product, using a computer, a computer display and a telecommunications link between the user's computer and the network web site.

4. The Bigstar site is a network web site that allows users to search for particular video products and to interactively preview selected pre-recorded portions of particular video products (*i.e.*, movies). Entire movies are not previewable. The Bigstar site streams the video and audio data, representing approximately 3 to 4 minutes of a particular movie, to the user's computer over the telecommunications link. The user can then employ the Windows™ Media Player program to play the streaming data as the data is streaming to the user, thereby allowing the user to view the pre-recorded portion of video. The Media Player application program also provides users with a simulated control panel which allows them to start, stop and pause the playback, as well as control the volume of the playback.

5. At the Bigstar site, users are allowed to place particular selections such as DVD or VHS format movies in a shopping basket (cart) and purchase the items in their basket at the end of their visit. According to one way of operating the web site, a unique identification (ID) is assigned to the user upon entry into the web site, and then stored in the user's computer in what is known as a "cookie." This ID is then provided by the user's computer back to the Bigstar web site during a subsequent visit to the Bigstar site. This ID allows the Bigstar site to maintain the contents of the visitor's shopping basket after the visitor leaves the Bigstar site.

6. Exhibits A-G, attached hereto, are true and accurate copies of print outs of particular screens from the Bigstar site. Upon initial access to the Bigstar site, a user has several options (Exhibit "A"). He or she can either sign in as a new user and create a new account, or sign in as an existing user under an existing account. Creating a new account and registering as a user involves inputting specific information such as the user's name, e-mail address, phone number, age and gender (Exhibit "B"). Upon creating a new account, the new user selects a member ID to identify the user to the Bigstar site. If the user enters the Bigstar site as a registered user, the

unique member ID assigned to that user is used to identify the user to the site server (Exhibit "C"). This unique ID allows the Bigstar site to monitor the user's progress through the site and keep track of items in their shopping basket¹. This ID is also used by the Bigstar site when the guest returns to the Bigstar site in order to maintain the contents of the customer's shopping basket. If the user utilized Netscape Navigator™ or Microsoft Internet Explorer™ to access the Bigstar site, the user's unique ID number is placed in a file on the user's computer as a "cookie." This cookie enables the user to leave the Bigstar site store and return later with their shopping basket intact because the cookie transmits the unique ID back to the Bigstar site upon reentry of the user to the site. The use of cookies and user input data to track user purchases and navigation through the Bigstar site is described in the Bigstar Privacy Policy Statement (Exhibit "D"). For example, the personal identification information is used to allow Bigstar to contact the user and customize the content of the site depending upon user selections, and cookies are used to identify customers and track their usage of the web site.

7. Once in the Bigstar site, users can perform key word searches based on different parameters (*i.e.*, title, keywords, and so on) (Exhibit "E"). For example, a key word search can be performed for the movie "The General's Daughter" whereby a screen containing information such as a description of the movie, and a list of available formats and prices is displayed (Exhibit "F").

8. I used the Bigstar site's video sampling feature at my office to preview the movie "The General's Daughter" as depicted on the home page of the Bigstar site (Exhibit "A"). By clicking on the "Video Clip" button displayed under the title of the video, I was able to access a download page (Exhibit "G") that enabled me to selectively download a view a portion (video clip) of the movie. Approximately 3 to 4 minutes of the movie was downloaded for playing using the Windows Media Player program on my personal computer. The complete movie was not available for preview.


¹ The shopping basket is a tool for allowing user's to keep track of items they wish to purchase. As they progress through the site, they can place selected items, such as DVDs or VHS tapes, in their basket for purchase at a later time during their present visit to the web site or during a later visit to the web site.

9. When I accessed the Bigstar site, a cookie was stored in the memory on my personal computer which was used to access the Bigstar site. After placing particular DVDs in a shopping basket, I exited the site and returned a few minutes later. I was able to view the shopping basket and it contained the same DVDs. It is my belief that this occurred because the Bigstar site stored the contents of the shopping basket along with my cookie ID information. When I reaccessed the Bigstar site, the personal computer transmitted the ID information in the cookie to the Bigstar site and I was able to access the contents of my previous shopping basket.

10. Two claim charts, attached hereto as Exhibit "H", compare pending independent Claims 1 and 6 of the present invention with the Bigstar site. The claim charts reveal that there is a one-to-one correlation between each element of pending Claims 1 and 6 and the features of the Bigstar site. Therefore, in my opinion, at least Claims 1 and 6 of the presently pending application are infringed by the Bigstar site.

11. A careful and thorough search has also been performed under my direction and the direction of the applicant. A computerized search was conducted by Stanley D. Schwartz, Esq. of patents classified and cross-referenced in Class 345: subclasses 327 and 328; and in Class 707: subclass 529. The results of the search are proved in the Information Disclosure Statement enclosed with this petition. I believe that none of the discovered references preclude the patentability of the presently pending claims.

Executed this 28th day of January, 2000 at San Francisco, California.

By: 
Geoffrey T. Staniford
Reg. No. 43,151

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Telephone: (415) 705-6381
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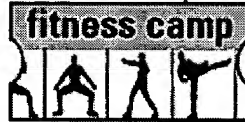
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The General's Daughter

When the daughter of a well-known and well-respected base commander is raped and murdered, the undercover military investigator (John Travolta) assigned to the case discovers a shocking labyrinth of murderous sexual obsession and deceit. Supporting performances by Madeline Stowe and James Cromwell. Based on the novel by Nelson DeMille.



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video bestseller

Austin Powers: The Spy Who Shagged Me



In his second screen adventure, British superspy Austin Powers (Mike Meyers) must return to 1969, as arch-nemesis Dr. Evil has ventured back to that year and successfully stolen Austin's "mojo" and set up an ultrapowerful cannon and aimed it at the moon. With the help of gorgeous agent Felicity Shagwell (Heather Graham), the newly single Austin must now not only contend with Dr. Evil, but also Evil's vicious, pint-size attack-clone, Mini-Me.

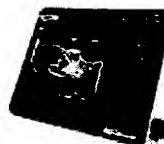
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video on demand

New! Video Previews

With bigstar Broadband you can preview trailers of movies on demand! Checkout streaming video for hot new titles like BUENA VISTA SOCIAL CLUB, THE IRON GIANT and



EXHIBIT

A

Friday, January 7

today's star interview

Winona talks about

GIRL, INTERRUPTED.
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next YAHOO! Chat

1/10 Denise Austin

1/13 Kate Winslet

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this week's box office

1.	Stuart Little	\$16.0m
2.	The Green Mile	\$13.2m
3.	Any Given Sunday	\$13.1m
3.	Toy Story 2	\$12.2m
5.	The Talented Mr. Ripley	\$12.0m
6.	Galaxy Quest	\$9.7m
7.	Bicentennial Man	\$8.0m
8.	Deuce Bigalow: Male Gigolo	\$5.3m
9.	Man on the Moon	\$5.2m
10.	Anna and the King	\$4.8m



be notified when they arrive on video or dvd!

today's birthdays

[Nicolas Cage \(1964\)](#)
[Kenny Loggins \(1948\)](#)
[Vincent Gardenia \(1922\)](#)

[Use our Birthday Finder](#)

today's poll

What celebrity couple looks the best together?

- ☐ Michael Douglas and Catherine Zeta-Jones
- ☐ Alec Baldwin and Kim Basinger



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BIGSTAR



THE BLAIR WITCH PROJECT. We'll be adding new videos all the time so be sure to check in often. [Click here to see more!](#)

star spotlight

Tom Cruise: Risky Businessman



Perpetually youthful megastar [Tom Cruise](#) is keeping his ears wide open for the sounds of Oscar® buzz generated by his performance as a warped motivational speaker in director [Paul Thomas Anderson](#)'s ensemble drama, MAGNOLIA.

star bio

movie stills

video clip

- [Jerry Maguire](#)
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- [A Few Good Men](#)
- [Days of Thunder](#)
- [Rain Man](#)
- [The Color of Money](#)
- [Top Gun](#)
- [The Outsiders](#)
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- ☐ Antonio Banderas and Melanie Griffith
- ☐ Brad Pitt and Jennifer Aniston
- ☐ Puff Daddy and Jennifer Lopez

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Don't have a bigstar.com account? Please fill out the following information and let us make shopping and checking out easier and quicker!

[Click here to create an account via Secure Server](#)
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Required information is marked with an asterisk (*).

Member ID and Password:***Choose a Member ID:**

Select a Member ID between 6 and 50 characters in length.
 (We encourage you to use your email address since it is unique and easily recalled.)

***Choose a Password:**

Select a Password between 6 and 50 characters in length.
 (Please try to use numbers and special characters in your password. For example: 34main\$t or h@nson3.)

***Confirm Your Password:**

Re-enter your Password.

In case you forget your password, you can immediately look it up online. Just give us a secret question, which we'll ask you before we provide your password. Be sure your question is one that can only be answered by **you** and keep it short - a one or two word answer is best!

***Your Secret Question:**

***Your Secret Answer:**

***Your First Name:**

***Your Last Name:**

***email Address:**

Phone Number:

Preferred Shopping Options:
Preferred Movie Format: ☒ ALL ☐ VHS ☐ DVD

Parental Lock: Would you like to us to filter out "adult content" from search results while you are logged in?

☐ ☒




- Yes - No

email Preferences: ☒ **Yes**, please keep me updated on special offers and other cool stuff at bigstar.com via email. (If you prefer **not** to receive these notices, just uncheck the box.)

email Format: ☐ HTML ☒ Text

Age:

Sex: ☐ Male ☐ Female

Children: Are there any children under the age of 12 living in your household?

☐ Yes ☐ No

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At bigstar.com, one of our goals is to protect your privacy as a customer. We use customer information to enhance your overall shopping experience and do not sell, trade or rent your personal information to others. Bigstar.com will not divulge, share, or sell customer information without explicit prior consent from customers and visitors to the site. The information that you provide is used to create a fun and more personalized experience for you, in accordance with the terms provided below:

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- **Browsing.** For each visitor to our Web pages, our Web server automatically recognizes the consumer's domain name, but not their individual e-mail address. If you visit bigstar.com and do not make a purchase, your email address is not stored in our system.
- **Orders.** When you place an order at bigstar.com you provide your name, mailing address, telephone number, email address, a unique login name, password, credit card number and expiration date. We collect this information for the following purposes: personal identification, to allow us to ship orders to you, to allow us to contact you regarding your order status and to allow us to personalize your shopping experience by customizing the content of our site.
- **Cookies** are small pieces of information that are stored by your browser on your computer's hard drive. Bigstar.com uses cookies to identify customers and track usage of the web site. You may choose to disable cookies on your computer and you will still be able to shop at bigstar.com.
- **Sweepstakes.** Bigstar.com frequently runs sweepstakes on the site. This provides you with the opportunity to have fun and win prizes. Contact information collected in conjunction with these sweepstakes will be used to notify contest winners and to develop new promotions and features on the site.
- **Surveys.** Bigstar.com also makes use of surveys to gather general information about its customer base. Please know that while these surveys are not mandatory, they do help us to serve you better.

Security:

Our secure server software encrypts all personal information, ensuring that your information stays private and protected. Your credit card information and sign-in password, along with other personal information, are processed in an unreadable, encrypted format at all times. This information is further protected by a firewall based security system.

Information Non-disclosure Policy:





We will not share customer personal information, or specific account activity, with anyone unless required by law. BigStar may provide aggregate statistics about sales, customers and other site data information to certain reputable third parties. Such information shall not include any personally identifying information.

Links To Other Sites:

Bigstar.com occasionally will offer links to other sites. Please know that when you enter these other sites (using links on bigstar.com's site) you are entering a site for which bigstar.com has no responsibility. These links are provided in order to better round out your entertainment experience. However, we can not guarantee the same level of confidence at these sites. Please contact the web administrator of the individual third party sites if you have any comments or concerns.

BigStar's Newsletters and Promotional Mailings:

BigStar will send email newsletters, promotional emails, and product availability notifications to customers and visitors to our site or a partner site who indicate that they are interested in receiving such mailings. For these services we simply require an email address, which we will use only to send you the requested information. You can unsubscribe at any time by logging in to your account and by updating your account information. We may, from time to time and after careful screening, include special promotional offers or information from reputable third parties in such mailings

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If you have any questions regarding this privacy statement or your dealings with bigstar.com, please feel free to contact us:

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Enter multiple names, delimited with quotation marks, to find people who worked together in movies, (i.e. "Robert De Niro" "Al Pacino" -or- "De Niro" "Pacino").

Keyword(s):

Look for words contained in the movie's description or reviews.

Search

additional search options:

Format: ☒ ALL ☐ Video/VHS ☐ DVDCategory/Genre: Rating: Decade of Release: Language: Language Format:

Special Features:

- | | |
|---|---|
| <input type="checkbox"/> Clamshell | <input type="checkbox"/> Narrated |
| <input type="checkbox"/> Collectors Edition | <input type="checkbox"/> Unedited Version |
| <input type="checkbox"/> Closed Captioned | <input type="checkbox"/> Directors Cut |
| <input type="checkbox"/> HiFi Sound | <input type="checkbox"/> Letterboxed |
| <input type="checkbox"/> Stereo Sound | <input type="checkbox"/> Digital Sound |
| <input type="checkbox"/> AC3 Sound | <input type="checkbox"/> CX Encoding |
| <input type="checkbox"/> DTS Sound | <input type="checkbox"/> THX Sound |

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Description:

When the daughter of a well-known and well-respected base commander is raped and murdered, the undercover military investigator (Travolta) assigned to the case discovers a shocking labyrinth of murderous sexual obsession and deceit. Based on the novel by Nelson DeMille.

Full Credits:Director: [Simon West](#)Star: [John Travolta](#) [Madeleine Stowe](#) [James Cromwell](#) [Timothy Hutton](#)Clarence Williams III [James Woods](#)Screenwriter: [Christopher Bertolini](#)Producer: [Mace Neufeld](#)Director of Photography: [Peter Menzies Jr.](#)Editor: [Glen Scantlebury](#)Production Designer: [Dennis Washington](#)Costume Designer: [Erica Edell Phillips](#)

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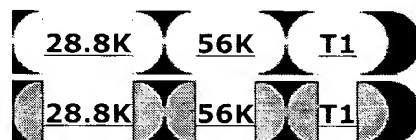
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CLAIM CHART

U.S. Patent Application No. 09/412,404, Filed October 5, 1999

NETWORK APPARATUS AND METHOD FOR PREVIEW OF MUSIC PRODUCTS AND COMPILATION OF MARKET DATA

Amended Claim 1 of the present application	The Bigstar™ Site
A method for enabling a remote user to preview a portion of a pre-recorded video product from a network web site containing pre-selected portions of different pre-recorded video products, using a computer, a computer display and a telecommunications link between the user's computer and the network web site, the method comprising the steps of:	Bigstar Entertainment™, Inc. has established a network web site which allows users with a personal computer, display and telecommunications link to access the Bigstar web site and preview pre-selected portions of pre-recorded video products.
a) using the remote user's computer to establish a telecommunications link to the network web site wherein the network web site comprises (i) a central host server coupled to a communications network for retrieving and transmitting the pre-selected portion of the pre-recorded video product upon request by a remote user and (ii) a central memory device for storing pre-selected portions of a plurality of different pre-recorded video products;	<p>In order for users to access the Bigstar site, they must first use their computer to establish a communications link to the Bigstar site.</p> <p>Based upon the functionality of the web site, the Bigstar site must have a central host server coupled to a communications network, such as the public telephone company, for retrieving and transmitting the pre-selected portion of the pre-recorded video product upon request by the user. The site must also have a central memory device for storing the pre-selected portions of the plurality of different pre-recorded video products.</p>



<p>b) transmitting user identification data from the user's computer to the central host server thereby allowing the central host server to identify and track the user's progress through the network web site;</p>	<p>The Bigstar site operates by pushing the video content to the user's computer upon a request by the user. The video is then played on the user's computer by a separate program, such as a Microsoft Windows Media Player. The user identification data is represented by the network address of the user's computer. This network address (IP address) must be transmitted to the Bigstar site so that the video data can be transmitted to the user computer for playback through the appropriate web browser plug-in program.</p> <p>Bigstar's Online Privacy Policy statement, which is accessible to users of the Bigstar site, states that cookie technology is used to identify customers and track their usage of the web site. (Exhibit D). In general, with cookie technology, a unique ID number is placed in a file (the "cookie") on the user's computer system. This cookie transmits the unique ID of the user back to the Bigstar site and allows tracking of the web pages that the user has accessed.</p>
<p>c) choosing at least one pre-selected portion of the pre-recorded video products from the central host server;</p>	<p>After entering the Bigstar site, users are allowed to select particular pre-recorded portions of selected videos by clicking the "video clip" selection button associated with a video product. (See Exhibit A.)</p>
<p>d) receiving the chosen pre-selected portion of the pre-recorded products; and</p>	<p>After clicking on the selected pre-recorded video portion, the user receives the selected pre-recorded video as a data stream over the telecommunications link. (See Exhibit G)</p>
<p>e) interactively previewing the received chosen pre-selected portion of the pre-recorded video product.</p>	<p>The Windows Media Player program allows the user to interactively view the data stream which represents the pre-recorded video. In other words, the user can view and listen to the pre-recorded video and control the transmission of the data stream by starting, stopping and "replaying" sub portions of the video.</p>

Amended Claim 6 of the present application.	The Bigstar™ Site
A network web site for allowing a remote user to preview a pre-selected portion of a pre-recorded video product, using a computer, a computer display and a telecommunications link between the remote user's computer and the network web site, the network web site comprising:	Bigstar Entertainment™, Inc. has established a network web site which allows users with a personal computer, display, and telecommunications link to access the Bigstar web site and preview pre-selected portions of pre-recorded video products
a) a central host server coupled to a communications network for retrieving and transmitting the pre-selected portion of the pre-recorded video product upon request by the remote user;	Based upon functionality of the web site, the Bigstar site must include a central host server coupled to a communications network, such as the public telephone company, for retrieving and transmitting the pre-selected portion of the pre-recorded video product upon request by the user. The site must also have a central memory device for storing the pre-selected portions of the plurality of different pre-recorded video products.
b) a central storage device for storing pre-selected portions of a plurality of different pre-recorded video products, the central storage device coupled to the central host server;	The Bigstar site <u>must</u> include a central memory device coupled to the central host server for storing the pre-selected portions of a plurality of different pre-recorded video products.
c) identification (ID) means for recognizing a user ID which specifically identifies the user to the central host server;	Upon registering, a user selects a Member ID which is used to identify the user to the Bigstar site. (See Exhibits B-C.) Furthermore, the Bigstar site <u>must</u> include means for recognizing and utilizing the unique ID supplied by the "cookie" in order to obtain the individual preference data for each user.
d) control means for providing the user with interactive control over the preview of the pre-selected portion of the pre-recorded video products.	Users can utilize the Windows Media Player application program to convert the streamed data into sound and graphic content and interactively preview the pre-selected portion of the pre-recorded video product.